



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Adler Construction, Inc.

File: B-261506.2

Date: November 7, 1995

Rosemary Hanna Hayes, Esq., and Paul W. Moses II, Esq., Maguire, Voorhis & Wells, for the protester.

Christopher P. Kneib, Esq., Cynthia S. Guill, Esq., and Diane D. Hayden, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer properly rejected bid containing language that made it uncertain, absent post-bid opening explanation, whether bidder intended to provide ozone treatment system in accordance with specifications.

DECISION

Adler Construction, Inc. protests the award of a contract to Heard Construction, Inc. under invitation for bids (IFB) No. N62467-94-B-2690, issued by the Naval Facilities Engineering Command for installation of an ozone water treatment system. Adler contends that the Navy erroneously determined its bid to be nonresponsive.

We deny the protest.

On April 4, 1995, the agency issued the solicitation for a fixed-price contract to install a new ozone water treatment system and ancillary mechanical and electrical systems for cooling towers at the Naval Air Warfare Center in Orlando, Florida.

Adler submitted the lowest of 11 bids received on May 18. Item 17 of the bid form, standard form (SF) 1442, where Adler entered its bid price, contained the following notation: "Price based on alternate ozone equipment than shown on drawings." On May 19, in response to an inquiry by a contract specialist, Adler provided an explanation of its bid, in which it denied taking exception to any of the solicitation requirements.

The Navy concluded, however, that it could not determine that the bid was responsive without consideration of the post-bid opening explanation. Accordingly, by letter of July 12, the Navy rejected Adler's bid, and this protest followed.

Adler explains that the statement in item 17 of the SF1442 merely repeated what the solicitation provided. The solicitation contained six drawings. The fifth of these drawings, No. 5241588, the piping and equipment layout and flow diagram, used a Reztex model 2L-1050 ozone generator to depict the process water ozonation flow. The drawing contained a legend, specifically stating that the listing of a manufacturer was "intended only to convey the basis of design" and was not intended as a limitation on competition. Further, amendment No. 0003 to the IFB, dated May 4, elaborated on this guidance as follows:

"The number of injectors and hand valves shown [on drawing No. 5241588] is intended to be conceptual only. The number of injectors and valves, and their arrangement, shall be as necessary to meet the requirements of the specification."

Thus, Adler explains, it only inserted the language in item 17 of the SF 1442 to advise the agency that as permitted by drawing No. 5241588, the protester intended to provide another brand of ozone generator than the Reztex model shown on that drawing. Adler concedes that it provided this information "unartfully" but argues that the agency is simply overanalyzing the bid.

To be responsive, a bid must unequivocally offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform strictly in accordance with the IFB's material terms and conditions. Astro-Valcour, Inc., B-253253, Aug. 30, 1993, 93-2 CPD ¶ 128. An agency must reject any bid where the bidder attempts to impose conditions that would modify such material terms and conditions. Federal Acquisition Regulation § 14.404-2(d); New Dimension Masonry, Inc., B-258876, Feb. 21, 1995, 95-1 CPD ¶ 102. Where a bid is ambiguous with respect to a material requirement, the bid must be rejected as nonresponsive. Northwestern Motor Co., Inc., B-244334, Sept. 16, 1991, 91-2 CPD ¶ 249.

Here, drawing No. 5241588 depicted not only an ozone generator but pumps and an air compressor, with specific requirements for each. Absent any description of the equipment or any explanation as to which equipment the note at item 17 of the SF 1442 referred, the bid was ambiguous as to whether Adler intended to furnish equipment meeting the specifications. This ambiguity rendered the bid nonresponsive. Id. Adler's intention of providing a system meeting specifications becomes clear only when one considers the explanation provided in Adler's May 19 letter. A bid which is nonresponsive on its face may not, however, be converted into a responsive bid by post-bid opening clarifications or corrections. Plateau Elec. Constructors, Inc., B-256495, June 27, 1994, 94-1 CPD ¶ 384.

The record therefore supports the Navy's determination that Adler's bid was nonresponsive, since the bid was ambiguous and it would have been improper to consider Adler's explanation to establish the responsiveness of the bid.

The protest is denied.

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